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APR 13 2007

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TO: Mail Stop Appeal Brief - Patents - United States Patent and Trademark Office

Fax No. 571-273-8300 Phone No.

FROM: Cora A. Wray (Typed or printed name of person signing Certificate)

Fax No. 513-626-1355 Phone No. 513-626-6622

Application No.: 10/719,755

Inventor(s): Andrea Demetrius Bowens-Jones *et al.*

Filed: November 21, 2003

Docket No.: 9447

Confirmation No.: 3138

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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

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Cora A. Wray (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:**

1. Fee Transmittal – 1 page
2. Notice Of Appeal – 10 page

Number of Pages Including this Page: 12**Comments:**

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8668R (FAX-USPTO.doc Revised 11/18/2005)

FEES TRANSMITTAL for FY 2007 Patent fees are subject to annual revision. Effective December 8, 2004		Complete if Known		RECEIVED
		Application Number	10/719,755	CENTRAL FAX CENTER
		Confirmation Number	3138	
		Filing Date	November 21, 2003	APR 13 2007
		First Named Inventor	Andrea Demetrius Bowens-Jones, et al.	
		Examiner Name	Renee Claytor	
		Art Unit	1617	
TOTAL AMOUNT OF PAYMENT (\$500)		Docket No.	9447	

METHOD OF PAYMENT			FEE CALCULATION (continued)																																													
<p>1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to:</p> <p>Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company</p>			<p>5. ADDITIONAL FEES</p> <table> <thead> <tr> <th style="text-align: left;"><u>Fee Description</u></th> <th style="text-align: right;"><u>Fee Paid</u></th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1st month</td> <td style="text-align: right;">(\$120) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2nd month</td> <td style="text-align: right;">(\$450) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3rd month</td> <td style="text-align: right;">(\$1,020) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4th month</td> <td style="text-align: right;">(\$1,590) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5th month</td> <td style="text-align: right;">(\$2,160) <input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td style="text-align: right;">(\$180) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td style="text-align: right;">(\$130) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td style="text-align: right;">(\$50) <input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td style="text-align: right;">(\$130) <input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td style="text-align: right;">(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td style="text-align: right;">(\$500) <input checked="" type="checkbox"/></td> </tr> <tr> <td>Request for oral hearing</td> <td style="text-align: right;">(\$1,000) <input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td style="text-align: right;">(\$1,370) <input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td></td> </tr> </tbody> </table>		<u>Fee Description</u>	<u>Fee Paid</u>	Extension for reply within 1 st month	(\$120) <input type="checkbox"/>	Extension for reply within 2 nd month	(\$450) <input type="checkbox"/>	Extension for reply within 3 rd month	(\$1,020) <input type="checkbox"/>	Extension for reply within 4 th month	(\$1,590) <input type="checkbox"/>	Extension for reply within 5 th month	(\$2,160) <input type="checkbox"/>	Information Disclosure Statement fee	(\$180) <input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130) <input type="checkbox"/>	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50) <input type="checkbox"/>	Non-English specification	(\$130) <input type="checkbox"/>	Notice of Appeal	(\$500) <input type="checkbox"/>	Filing a brief in support of an appeal	(\$500) <input checked="" type="checkbox"/>	Request for oral hearing	(\$1,000) <input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>	Other:															
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<p>3. APPLICATION SIZE FEE: Sheets of Spec and Drawings <input type="checkbox"/> (\$250 for each 50 sheets in excess of 100, except for sequence and program listings)</p>			<p>SUBTOTAL (2)+(3) (\$11)</p>																																													
<p>4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE:</p> <table> <thead> <tr> <th style="text-align: left;"><u>Extra</u></th> <th style="text-align: left;"><u>Fee from</u></th> <th style="text-align: left;"><u>Fee</u></th> <th></th> </tr> <tr> <th style="text-align: left;"><u>Claims</u></th> <th style="text-align: left;"><u>Below</u></th> <th style="text-align: left;"><u>Paid</u></th> <th></th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims: <input type="checkbox"/> =</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>** or number previously paid, if greater; For Reissues, see below</p> <p>Fee Description</p> <p>Claims in excess of 20 (\$50 per claim)</p> <p>Independent claims in excess of 3 (\$200 per claim)</p> <p>Multiple dependent claim, if not paid (\$360)</p> <p>**Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim)</p> <p>**Reissue claims: each claim over 20 and more than original patent (\$50 per claim)</p>			<u>Extra</u>	<u>Fee from</u>	<u>Fee</u>		<u>Claims</u>	<u>Below</u>	<u>Paid</u>		Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/> =	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/> =	<input type="checkbox"/>	Multiple Dependent claims: <input type="checkbox"/> =	<input type="checkbox"/> =	<input type="checkbox"/> =	<input type="checkbox"/>	<p>SUBTOTAL (4) (\$11)</p>																									
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SUBMITTED BY		Complete (if applicable)		
Name (Print/Type)	Andrew J. Hagerty	Registration No. (Attorney/Agent)	44,141	Telephone (513) 626-0051
Signature			Date	April 13, 2007

+ This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEE OR COMPUTERIZED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APR 13 2007

Application No. : 10/719,755
Inventor(s) : Andrea Demetrius Bowens-Jones, *et al.*
Filed : November 21, 2003
Art Unit : 1617
Examiner : Renee Clayton
Docket No. : 9447
Confirmation No. : 3138
Customer No. : 27752
Title : Improved Anti-perspirant Methods And Compositions

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Final Rejection mailed on January 3, 2007 and Advisory Action mailed on March 13, 2007.

A timely Notice of Appeal was filed on March 28, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-16 are currently pending and stand rejected. Claims 17-20 have been canceled without prejudice.

Claims 1-16 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

All of the claim amendments to date have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is directed to antiperspirant compositions comprising skin-adhering polymers for enhanced substantivity of antiperspirant actives.

In the Background Section of the application, Appellants describe a shortcoming with the existing art:

Antiperspirant actives help to reduce or eliminate perspiration on the underarm or other areas of the skin. It is believed that these antiperspirant actives work by dissolving in sweat after application, diffusing as a dissolved material into the sweat ducts, and then precipitating in the sweat ducts to form a plug that inhibits the flow of perspiration. Although the antiperspirant actives are capable of providing this function, the actives are not able to achieve optimum performance due to their inability to adhere to the skin. After application, most of the actives flake off or are transferred from the skin onto clothing or other material thereby leaving only a minimal amount of active available to inhibit the flow of perspiration. *See* page 1, lines 13-22.

Accordingly, the Appellant-discovered problem is that antiperspirant active material is not available to form plugs when sweating begins since it has flaked off or otherwise transferred away from the skin. Appellants have discovered a novel composition to address the above-noted problem. The composition comprises a skin-adhering system including a skin-adhering polymer and one or more volatile solvents; an antiperspirant active; a thickening agent; and an anhydrous carrier.

The subject matter of independent claim 1 is as follows: anhydrous, antiperspirant compositions comprising: a skin-adhering system comprising a skin-adhering polymer (*see, e.g.*, from line 19 on page 3 to line 24 on page 4) and one or more volatile solvents (*see, e.g.*, from line 26 on page 4 to line 9 on page 5); an antiperspirant active (*see, e.g.*, from line 10 on page 5 to line 9 on page 6); a thickening agent (*see, e.g.*, from line 10 on page 6 to line 13 on page 8); and an anhydrous carrier (*see, e.g.*, page 8, lines 14-24), in an amount sufficient to provide antiperspirant efficacy.

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of claims 1-16 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Schraer *et al.* (U.S. Patent No. 6,274,127; hereinafter "Schraer") in view of Swaile (U.S. Patent No. 6,149,897; hereinafter "Swaile").

ARGUMENTS

The Rejection of Claims 1-16 Under 35 U.S.C. § 103(a) As Being Unpatentable Over Schraer in view of Swaile

The Combined Disclosures of Schraer and Swaile Fail to Meet Each and Every Limitation of the Claimed Subject Matter, and Therefore, Claims 1-16 Are Patentably Distinct From the Applied References

Each of claims 1-16 is directed to an anhydrous, antiperspirant composition comprising: a skin-adhering system comprising a skin-adhering polymer and one or more volatile solvents; an antiperspirant active; a thickening agent; and an anhydrous carrier.

The Examiner relies on the disclosure of Schraer to read on all of the recited features of the rejected claims except for: "a volatile solvent, the glass transition temperature of the skin-adhering polymer, [and] the film-formation at or above the entanglement molecular weight of the polymer." See Final Rejection at page 3. Appellants however disagree that Schraer teaches a composition having both a skin-adhering polymer and a separate thickening agent.

To meet the skin-adhering polymer feature recited in the claims, the Examiner cites the water-reactive monomers disclosed by Schraer. However, these monomers, as taught by Schraer, are not intended to polymerize into a polymer film until activated by sweat or water. This is evidenced by the following Schraer excerpt:

The antiperspirant compositions are preferably applied to dry skin, wherein the applied composition on the skin is in the form of discontinuous polymer-containing films positioned over the sweat ducts in the skin, and/or otherwise forming plugs within the sweat ducts, wherein the resulting polymer-containing films/plugs are derived from water-reactive monomers that react with sweat or other aqueous liquid at the opening of the sweat ducts after application . . . See col. 13, lines 21-28; emphasis added.

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Thus, these water-reactive materials within the composition prior to application to the skin, and upon application to the skin but prior to being triggered by sweat or other aqueous liquid, are not in the form of a skin-adhering polymer. As noted above, Appellants have discovered the need for a skin-adhering polymer to adhere the antiperspirant active to the skin prior to a sweat event so that the active is available to thereafter form plugs. It is quite conceivable that the composition of Schraer could rub off or transfer to clothing prior to a sweat event (or generation of other aqueous fluids) that is needed to polymerize the water-reactive monomers into a polymer film. This scenario is exactly the shortcoming of existing antiperspirant compositions identified by Appellants—see the Summary section above. Accordingly, Schraer's monomers would not address the Appellant-identified problem and do not read on the skin-adhering polymer recited in the pending claims.

Appellants would also like to clarify that the compositions recited in the pending claims are those prior to application to one's skin. This becomes clear when one reads the specification, and particularly the discussion around the volatile solvent component of the skin-adhering system. Appellants state, on page 4 of the as-filed specification, that “[t]he function of the volatile solvent as part of the skin-adhering system is to aid in rapid film formation by evaporating quickly on skin to leave behind the polymer film, active, and other components” (see lines 30-32). Thus, if the Examiner and/or Board takes the position that the Schraer composition when applied to the skin and after polymerization of the water-reactive monomers comprises a skin-adhering polymer, then Appellants submit that any employed volatile solvent would be evaporated at that point, and therefore, the applied composition would not meet the volatile solvent feature of the pending claims.

In a non-final Office Action (mailed on September 25, 2006), the Examiner relied upon the disclosure of an optional component (thickening agent) to read on both the skin-adhering polymer and separate thickening agent features recited by the pending claims. Schraer provides a laundry list of optional suspending/thickening agents—the list spans from line 11 in column 9 to line 38 in column 11. By doing this however, the Examiner

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is improperly relying on a single component (and notably, an "optional" component") to read on two separate and distinct features—a skin-adhering polymer and a thickening agent—that are recited in the rejected claims. There is clearly no teaching of employing two separate, optional suspending agents in the Schraer compositions. The examples in Table 1 support this conclusion. Discounting the water-reactive monomers, as distinguished above, the examples do not disclose a composition having a skin-adhering polymer and a separate thickening agent.

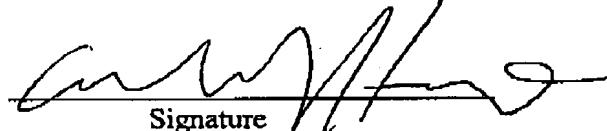
Based on the above discussion, Appellants respectfully submit that Schraer fails to disclose a composition having a skin-adhering polymer and a separate thickening agent. And since Swaile does not remedy the shortcomings of Schraer, the claimed inventions are patentably distinct from the combination of these references.

SUMMARY

In view of all of the above, it is respectfully submitted that the Section 103 rejection of record should be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Andrew J. Hagerty
Registration No. 44,141
(513) 626-0051

Date: April 13, 2007
Customer No. 27752

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CLAIMS APPENDIX

1. (Rejected) Anhydrous, antiperspirant compositions comprising:
 - a. a skin-adhering system comprising:
 - i) a skin-adhering polymer;
 - ii) one or more volatile solvents;
 - b. antiperspirant active;
 - c. thickening agent; and
 - d. an anhydrous carrierin an amount sufficient to provide antiperspirant efficacy.
2. (Rejected) The composition of claim 1 wherein the composition comprises
 - a. a skin-adhering system comprising:
 - i) from about 0.1% to about 30%, by weight, of a skin-adhering polymer;
 - ii) from about 0.1 to about 60%, by weight, of one or more volatile solvents;
 - b. from about 0.1 to about 30%, by weight, of an antiperspirant active;
 - c. from about 0.1 to about 35%, by weight, of a thickening agent; and
 - d. from about 10% to about 70%, by weight, of an anhydrous carrier.
3. (Rejected) The composition of claim 1 wherein the skin-adhering polymer is selected from the group consisting of acrylate polymers/co-polymers, silicone polymers/co-polymers, and mixtures thereof.
4. (Rejected) The composition of claim 3 wherein the acrylate polymer/co-polymer comprises monomers selected from the group consisting of acrylate monomers, methacrylate monomers, and mixtures thereof.
5. (Rejected) The composition of claim 3 wherein the silicone polymer/co-polymer comprises copolymers selected from the group consisting of silicone-acrylate copolymers, silicone-urethane copolymers, silicone-maleic anhydride copolymers, silicone resin copolymers, and mixtures thereof.

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6. (Rejected) The composition of claim 1 wherein the skin-adhering polymer has a glass transition temperature (Tg) of from at least about -30°C to about 30°C.
7. (Rejected) The composition of claim 1 wherein the skin-adhering polymer exhibits film-formation at or above the entanglement molecular weight of the polymer used.
8. (Rejected) The composition of claim 1 wherein the ratio of the weight percentage of polymer to the weight percentage of the thickening agent is from about 2:1 to about 0.5:1.
9. (Rejected) The composition of claim 1 wherein the volatile solvent is selected from the group consisting of alcohols, silicone fluids, fluorinated solvents, and mixtures thereof.
10. (Rejected) The composition of claim 9 wherein the alcohol is selected from the group consisting of ethanol, propanol, isopropanol, and mixtures thereof.
11. (Rejected) The composition of claim 1 wherein the antiperspirant active is selected from the group consisting of zirconium salts, aluminum salts, and mixtures thereof.
12. (Rejected) The composition of claim 1 wherein the thickening agent is selected from the group consisting of organic solids, silicone solids, gellants, inorganic particulates, and mixtures thereof.
13. (Rejected) The composition of claim 1 wherein the anhydrous carrier is a cyclic silicone fluid having from at least about 3 silicone atoms to about 7 silicone atoms.
14. (Rejected) The composition of claim 1 further comprising a pharmaceutical.
15. (Rejected) The composition of claim 1 further comprising a deodorant agent.
16. (Rejected) The composition of claim 1 further comprising an antimicrobial.
17. (Canceled).

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18. (Cancelled).

19. (Cancelled).

20. (Cancelled).

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.